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United States Court of Appeals

FOR THE SECOND CIRCUIT.

(Civil Action No. 62-10.)

R. S. DASS BADHWAR and R. B. LACHHMANDASS MOHANLAL & SONS, LTD., composing the co-partnership doing business under the firm name and style of MULKRAJ BROTHERS and BADHWAR,

Plaintiffs-Appellants,

against

THE COLORADO FUEL AND IRON CORPORATION, ISBRANDTSEN COMPANY, INC.,

Defendants-Appellees,

and

AMERICAN-HAWAIIAN STEAMSHIP COMPANY,

Defendant-Appellee-Appellant.

ON APPEAL FROM UNITED STATES DISTRICT COURT, FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX OF DEFENDANT-APPELLEE-APPELLANT AMERICAN-HAWAIIAN STEAMSHIP COMPANY

UNITED STATES COURT OF APPEALS
FEB 27 1957
SECOND CIRCUIT
J. DANIEL FUSARO, CLERK

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Civil Action No. 62-10.)

Relevant Docket Entries.

Date	Filing Proceedings
1951	
Feb. 24	Filed Answer of Defendant Isbrandtsen Company, Inc., to Cross-Claim of American-Hawaiian Steamship Company.
1955	
Jan. 12	Filed Notice to Amend Answer upon trial of Defendant, American-Hawaiian Steamship Company.
1955	
Sept. 21	Filed Judgment of Dismissal of Complaint and Cross Complaint.
1955	
Oct. 19	Filed Defendant, American-Hawaiian Steamship Company's Notice of Cross-Appeal.

Plaintiffs' Exhibit 4 (In Part).

(Becker Deposition).*

(174) Frederick Becker, Jr., called by and on behalf of the Plaintiffs, being first sworn by a Notary Public, was examined and testified as follows:

Direct examination by Mr. Dunn:

(177) Q. Who is the owner of that vessel? A. I do not know how to answer that question. As far as we were concerned, we were dealing with the Isbrandtsen Steamship Company as operators of the vessel. We did not deal with the owners.

Q. Was Isbrandtsen the firm with which you made your shipping arrangements? A. That is correct.— —I would like to qualify that. Isbrandtsen was represented here by a firm which at that time was operating under the name of Hansen & Tidemann and we made our freight engagement with Hansen & Tidemann as agents for the Isbrandtsen Steamship Company.

Q. Hansen & Tidemann were acting as agents for Isbrandtsen and you were acting as agents for Colorado? A. That is correct.

. . . . . .

(180) Q. I show you the paper marked Defendants' Exhibit B and ask you if that is a typewritten copy of the contract you made at that time? A. That is a true copy of the contract in my possession.

Mr. Tillinghast:

Q. And the contract in your possession is a copy? A. A signed copy; probably the original is in the possession of our shipper.

Mr. Dunn:

Q. By whom was the original actually signed? A. Do you mean that for the agent of the vessel or the shipper?

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* Page references for all depositions are to the stenographically numbered pages in each particular deposition.

Plaintiffs' Exhibit 4 (In Part).

Frederick Becker, Jr., for Plaintiffs—Cross.

Q. I mean who was the individual person who signed his name (181) to it? A. For whom? For the steamer or the shipper?

Q. For the steamer? A. Mr. S. E. Simpson.

Q. And with what firm was he connected at the time? A. He was an employee of Hansen & Tidemann.

* * * * * *

Q. The contract was made out in the name of Colorado Fuel & Iron Corporation? A. That's correct, in care of Farrell Shipping.

Q. Were you authorized by Colorado Fuel & Iron Corporation to make that contract or agreement? (182) A. I would like to again refer to my file. I am satisfied we were, but I would like to confirm it. (checks file) Colorado Fuel wrote us on July 26th, authorizing us to book 1,000 tons of caustic soda, the first part of which would arrive at New Orleans about August 15 of 1948.

* * * * * *

(203) Q. Well, your duties, I take it, then, continued up to the time that you did transmit bills of lading? A. That is correct.

Q. Did you make any inquiries as to the progress of the loading of the vessel? A. There is nothing in the files to reveal it. Very probably we were in touch with it, like we are with all of our shipments.

* * * * * *

Cross examination by Mr. Bensel:

(211) Q. When did you receive those bills of lading from Hansen & Tidemann? A. On September 3rd, I feel sure.

Q. And when did you send them, with the letter, Exhibit "I"? A. We would have mailed them immediately, the same day.

(212) Q. To-wit, September 3rd? A. That is right.

Plaintiffs' Exhibit 4 (In Part).

Frederick Becker, Jr., for Plaintiffs—Re-cross.

Q. Can you explain why the letter bears the date September 1st? A. Yes. In our office we always try to work ahead, and in doing so we often date our letters the date we anticipate the document will be ready for transmittal. We are very busy and we cannot afford to have too large an organization. Therefore, whenever we have an opportunity we work ahead. We customarily try to change the dates, but apparently in some cases it was overlooked.

* * * * * *

Re-cross examination by Mr. Scott:

(218) Q. Mr. Becker, your company prepared the originals of these bills of lading (indicating Exhibits F and H), signed by Hansen & Tidemann, by Mr. Dalton, which have been marked Exhibits "F" and "H"? A. Yes, sir.

Q. Those were prepared in good faith on the basis of the facts then known to your company and to you? A. Those were prepared on the basis of the information furnished (219) us by our shipper, plus the facts of the car numbers we had ordered to the vessel and the contents based on the figures given us in the rail bills of lading.

Q. They were prepared in the regular course of business? A. That is correct.

Q. In the regular way? A. That is right.

Q. In good faith? A. Definitely.

Q. On the basis of the facts then known to you? A. That is right.

Q. And submitted to Hansen & Tidemann for a signature? A. For signature and dating and completion.

Q. Signed by Mr. Dalton? A. Well, I think it was signed by Mr. Simpson, if I recall correctly.

Q. Well, these show that they were signed by Mr. Dalton, I believe? A. Then, they were. That is correct.

Q. Signed by somebody for Hansen & Tidemann? A. Signed by Hansen & Tidemann's representative; yes.

Plaintiffs' Exhibit 4 (In Part).

Frederick Becker, Jr., for Plaintiffs—Re-direct.

Q. And returned to you? A. Returned to us after they inserted the pertinent information, through rubber stamps and what not that apply.

Q. And by you delivered to Colorado? (220) A. That is correct.

Q. Did the procedure follow the regular and customary procedure in such transactions? A. Yes; nothing out of the ordinary.

* * * * * *

Re-direct examination by Mr. Dunn:

(238) Q. When you inquired you presumably were given an answer, or some information as to the fact, as to the status of the caustic soda at that time? A. Quite possibly we were told it was not yet loaded. It was an "On Board" lading, if you recall, and, therefore, we could not expect to get it until all the cargo was on board the vessel.

Q. Did you have any reason for thinking it might be loaded by September 1st? A. Possibly, because I see in here we had given them a date as late as August 31st for delivery of the cargo. There was always a possibility, while they expected it to take longer, it could be loaded on the first of the month.

Q. And you knew when the loading started, did you not, at that time? A. I am not quite positive I did. I would assume I did.

Q. Well, you knew when you had delivered the merchandise for loading? (239) A. No, Mr. Dunn. I don't know whether you are aware of the operation at Westwego or not, but the railroad delivers directly to the steamship company when the steamship is ready to load it. Therefore, we would not know ahead of time that it is all loaded. We would know that it is, perhaps, placed on the wharf ready for loading.

Trial Minutes.

Frederick R. Becker, Jr., for Defendant—Direct.

Q. Did you expect the caustic soda to be loaded as quickly as possible? A. Yes, because we understood that that was the first cargo to go aboard the ship. It was because the vessel was scheduled— —I believe it loaded very limited other cargo over there and then was coming to this side of the river to top off. Therefore, it was obvious the caustic soda would be some of the first to be loaded.

Q. Did you ascertain whether it would be the first to be loaded? A. No, Mr. Dunn. I don't ask the steamship company how they are going to stow a vessel.

Q. Are you quite sure now that you did not? A. No, I am not. Can your memory recall to you sometimes four years ago?

Q. I am asking you? A. All right. No, my memory is not good enough to recall an instance of that sort. It is routine in our office.

* * * * * *

Trial Minutes.

(Testimony of Frederick R. Becker, Jr.)

(213) Frederick R. Becker, Jr., called as a witness in in behalf of Colorado Fuel and Iron Corporation, having been first duly sworn, testified as follows:

Direct examination by Mr. Bensel:

(217) Q. With whom did you make the arrangements for space for this merchandise? A. Well, we were finally successful in getting space from Isbrandtsen Steamship Company through their agents, Hansen & Tidemann.

Q. In New Orleans? A. Yes.

Q. And did you, on behalf of Colorado, enter into a freight engagement contract? A. We did.

Trial Minutes.

Frederick R. Becker, Jr., for Defendant—Cross.

Mr. Bensel: Your Honor, that has been offered in evidence and I am not going to take any time with that.

Q. That was on July 29th, wasn't it? A. I think that's correct.

* * * * * *

Cross examination by Mr. Scott:

(257) The Court: When you say that it made no difference to you, you mean that when you were booking the cargo space it made no difference to you—

(258) The Witness: It made no difference to us who the owner of the ship was. We were doing business with Isbrandtsen.

* * * * * *

Cross examination by Mr. Tillinghast:

(262) Q. I show you a paper which is marked Dalton's Exhibit B taken at the time we took Mr. Dalton's testimony in New Orleans.

Will you tell me what that is, if you know (handing to witness)? (263) A. That's a photostatic copy of the original freight engagement for the first thousand tonnage.

Q. Between what parties was that agreement made? A. Between what parties?

Q. Yes. A. Between Colorado Fuel and Iron, through us, as their agent, and Hansen, Tidemann & Dalton, steamship agents.

Q. Is it signed? A. It is signed Isbrandtsen Steamship Company, Hansen & Tidemann, Agents.

Q. Is that generally the preliminary to any booking arrangement? A. That's correct.

* * * * * *

Trial Minutes.

Ward Wire, for Defendant—Cross.

(266) Q. Have you testified who prepared the bills of lading? A. We prepared them, presented them to Hansen, Tidemann & Dalton, and they finalize them by putting proper rubber stamps and dates and signatures, etc.

Q. Did you discuss this shipment with the American-Hawaiian Steamship Company at any time? A. No, at any time.

• • • • • •

(TESTIMONY OF WARD WIRE)

(292) WARD WIRE, called as a witness in behalf of the defendant Colorado Fuel and Iron Corporation, having been first duly sworn, testified as follows:

Cross examination by Mr. Dunn:

(310) Q. Is it true that whatever shipping arrangements you had to make in New Orleans for any shipments during that period and for a period of years prior thereto were handled through the Farrell people? A. Yes, all of our shipments that we made where (311) we designate the broker are handled through Farrell. We sell some goods in which they have their own broker that sell F. A. S. Gulf ports, and that is consigned to those brokers in that case, but that is very light.

Q. There is no question that whenever you had to make a shipment of New Orleans you handled the details thereof, the booking of the space and so on, through Mr. Becker and his associates? A. Yes, through his company, Farrell & Company, for many years.

• • • • • •

Trial Minutes.

Matthew S. Crinkley, for Defendant—Direct—Cross.

(TESTIMONY OF MATTHEW S. CRINKLEY)

(317) MATTHEW S. CRINKLEY, called as a witness by defendant Isbrandtsen Company, Inc., being first duly sworn, testified as follows:

Direct examination by Mr. Scott:

Q. Did this matter in suit here, as far as (318) Isbrandtsen was concerned, come under your overall supervision? A. Yes, sir.

Q. You are familiar in general with the booking under which this caustic soda was booked? A. Yes, sir.

Q. And the substitution of the SS. *Hawaiian* for the *Swisshelm*? A. Yes, sir.

Q. Who were your agents at New Orleans? A. At that time it was Hansen & Tidemann, Inc.

* * * * * *

Cross examination by Mr. Tillinghast:

(325) Q. Was this charter for a voyage between any particular ports or was it for a period of time? A. A period of time.

Q. And you understood by the charter that you could order the ship to loading ports that you required and that the ship would carry the cargo to ports which you also designated? A. Yes, sir, that was the understanding and in accordance with the charter party or contract.

Q. The entire cargo space of the *Hawaiian* was chartered to your company; is that true? A. Yes.

Q. Was the ship subsequently delivered to your company under the charter party? A. Yes, sir.

* * * *

Trial Minutes.

Matthew S. Crinkley, for Defendant—Cross.

(327) Q. Whom did Hansen & Tidemann act for in New Orleans, if you know? A. They acted for Isbrandtsen Company, Inc. They were our agents. Is that what you mean?

Q. Yes. What services did they render to your company as agents? A. Several services. They were supposed to give the necessary attention to the vessel, the obtaining of a pier, the employment of stevedores, the booking and delivery of cargo to piers, instructions to stevedores as to loading, the solicitation and obtaining of cargo, also, the issuance of the necessary documents, the collection of freights and accounting to us.

Q. And did they perform all those services on this occasion? A. Yes, sir, they did.

* * * * * *

(328) Q. Do you recall the name of the stevedoring company who acted? A. I believe it was the New Orleans Stevedoring Company— —I am not sure if that is the correct title— —under the management of Mr. R. T. Smith.

Q. And the expenses of obtaining berth space and stevedoring and other functions performed were paid by the Isbrandtsen; is that true? A. That is true.

* * * * * *

(329) Q. Was there any other practical reason why you couldn't discharge the cargo? A. You couldn't work the ship. If you couldn't load, you couldn't discharge. You couldn't have gotten it out of the ship regardless of whether we wanted to or didn't want to or whether the shipper wanted to or didn't want to. You couldn't handle cargo in or out of the ship.

The Court: Couldn't handle cargo in or out?

The Witness: In other words, the ship was inactive. The winches were not working and wouldn't be permitted to work.

Trial Minutes.

Siguard E. Simpson, Jr., for Defendant—Direct.

By Mr. Tillinghast:

Q. By whom? A. By the crew of the ship. They have to furnish electricity or steam for the winches.

Q. If the crew were off the ship, then there wouldn't be anybody to furnish that; isn't that true? A. Yes, sir.

Q. Could you have hired people to work the ship from outside the union to which this crew belonged? (330) A. No, sir.

Q. Why? A. The unions have that whole situation too much controlled to permit any such.

* * * * * *

(Testimony of Siguard E. Simpson, Jr.)

(349) Siguard E. Simpson, Jr., called as a witness by defendant Isbrandtsen Company, Inc., being first duly sworn, testified as follows:

Direct examination by Mr. Scott:

Q. What was the relationship between Hansen & Tidemann and Isbrandtsen at that time with respect to this vessel, the SS. *Hawaiian*? A. Hansen & Tidemann, Inc. in New Orleans were agents for Isbrandtsen Company, Inc.

* * * * * *

(351) Q. Had any request been made by Farrell Shipping Company for those bills of lading before that time? A. Yes. It is a normal procedure to be called and asked when they could possibly—when they may expect to be able to receive their ladings. They called the day prior, the 2nd.

Q. Who, for Farrell, made that request? A. Well, it would be any number of persons in their office. I don't think it was Mr. Becker himself. I would say one of the clerks under his jurisdiction in the office would call to find out when his bills of lading would be ready.

* * * * * *

Trial Minutes.

Sigvard E. Simpson, Jr., for Defendant—Cross.

(354) Q. Were Hansen & Tidemann prepared to pay the overtime that is mentioned in that letter? A. Well, for the account of Isbrandtsen Company, (335) of course. Working as agents for Isbrandtsen Company, yes, sir.

* * * * * *

(356) Q. After the strike was over, was this vessel (357) loaded and dispatched from New Orleans as fast as possible? A. Yes, sir, she was. She worked completely around the clock from the commencement of loading until she sailed.

Q. Who paid the stevedores? A. Isbrandtsen Company, Inc. of New York.

Q. And you made the payment at New Orleans as their agents? A. That's right, submitted payments to them.

* * * * * *

Cross examination by Mr. Tillinghast:

(358) Q. You have testified that bills of lading were issued for the two shipments of caustic soda which are the subject of this action and that they were signed by your company on behalf of the Isbrandtsen Company; is that true? A. That's correct.

Q. And the bills were delivered to the Farrell Shipping Company? A. Yes.

* * * * * *

(366) Q. Did you order stevedores to work overtime on September 2d? A. Yes, sir, they were ordered to work around the clock. We had decided because of the overtime, to get the ship out, to sail the ship before the weekend would cost a lot less than what the ship was actually costing us.

* * * * * *

Trial Minutes.

Siguard E. Simpson, Jr., for Defendant—Re-cross.

Robert L. Gray, for Defendant—Direct.

Re-cross examination by Mr. Dunn:

(395) Q. This overtime loading, by the way, the round-the-clock loading, of course normally enables you to get done three days' work in one of normal loading? A. Almost. We have to—we still have to consider your meal hours in there, of course.

* * * * * *

Re-cross examination continued by Mr. Tillinghast:

Q. After the labor dispute was settled and the labor impediments were removed in December, 1948, were operations resumed on the ship? A. Yes, sir.

Q. Was there any delay in resuming operations? A. Not any abnormal delay, if any.

Q. What do you mean by that? A. Well, I mean anything that would hold the ship up outside of her normal operations.

Q. It took a considerable time to get a crew, didn't it? A. I think two or three days.

* * * * * *

(Testimony of Robert L. Gray)

(398) Robert L. Gray, called as a witness on behalf of American-Hawaiian Steamship Company, being first duly sworn, testified as follows:

Direct examination by Mr. Tillinghast:

(405) Q. Who furnished the berth of the ship when she did arrive at New Orleans? A. Isbrandtsen made all arrangements for cargo, berths, etc.

* * * * * *

Trial Minutes.

Robert L. Gray, for Defendant—Direct.

Q. Do you know what cargo was loaded at New Orleans, Mr. Gray, at this time? A. No, I don't.

Q. By whom was the cargo loaded? A. Isbrandtsen made the arrangements for loading the cargo.

Q. They arranged for the stevedores also, did they? (406) A. Yes.

Q. What function had the captain, if any, with regard to the loading and stowage of the cargo? A. The cargo was to be loaded to his satisfaction as far as stability and trim of the ship was concerned.

The Court: Isn't that a matter of common knowledge?

Mr. Tillinghast: Yes, Judge Ryan, it is.

The Court: He doesn't want it in a hold if it doesn't go there. That is his job.

By Mr. Tillinghast:

Q. Did the American-Hawaiian have any knowledge of the cargo which was to be loaded at that time? Did you know of the shipments which Isbrandtsen was going to load on your ship? A. I did not, no.

Q. Did your company, except possibly for the master? A. I can't answer that.

Q. Did the American-Hawaiian or anyone on behalf of the ship have anything to do with two shipments of about 1,500 tons of caustic soda which were loaded at that time? (407) A. No.

Q. Was your company a party to the negotiations for the booking of that cargo? A. No.

Q. Did you issue any bills of lading for that cargo? A. No.

Q. Did you receive any freights in connection therewith? A. No.

Trial Minutes.

Robert L. Gray, for Defendant—Direct.

Q. Under the charter you were required to receive any lawful cargo which the charterer desired to load; is that true? A. Aboard the vessel, yes.

Q. At any safe berth where the vessel was ordered by the charterer? A. Provided that the terms of the charter party were met, yes.

. . . . . .

(410) Q. Were there any negotiations between the time the contract expired by its terms and possibly prior thereto up to the time the vessel went on strike? A. Yes.

(411) Q. Were those negotiations continuous? A. Yes, they were.

Q. Were all disputes unresolved during this period by negotiation? Did all the disputes remain unresolved? Were you in agreement with the unions on anything? A. Oh, yes, on some things we were in agreement and other things not.

Q. What would you say with respect to the prospects of a strike, say, in the middle of August, 1948? Did you know the strike was going to occur? A. No, I did not.

Q. Were you optimistic that the disputes would be resolved by negotiation? A. I thought we would get together, yes.

Q. Right up to the last minute? A. Yes.

. . . . . .

(412) Q. Do you know if they were negotiating on the 2nd of September, Mr. Gray? A. Yes, I believe they had a meeting the morning of the 2nd of September.

Q. And at that time they were in agreement on a great many things, weren't they? A. On some things they were in agreement, yes.

Q. When the strike was finally declared, how long was it going to last? A. At that time I did not know.

Q. Did anybody know? A. I don't believe so.

Trial Minutes.

Robert L. Gray, for Defendant—Direct.

Q. Did the negotiations continue after the strike was declared? A. Yes, they did.

Q. The disputes might have been settled at any time, isn't that true? A. Oh, yes.

* * * * * *

(419) The Court: Did you order or did your home office order any of the ships in any port to be tied up in port and not sent out on a voyage at any time during this period that the injunction order was operating?

The Witness: No, sir, we operated on the theory that there would not be a strike and we operated as normal.

The Court: And you continued to accept cargo on all ships?

The Witness: Yes, sir.

The Court: And you did not instruct the masters of any of your ships to the contrary?

The Witness: No, sir, we did not.

* * * * * *

By Mr. Tillinghast:

(420) Q. When the strike was finally called, Mr. Gray, was there any delay or any unusual delay in obtaining a crew? Did you get a crew as quickly as you could? A. Yes, we got a crew as soon as possible.

Q. And did it take some time for the crew to get (421) up steam and otherwise prepare this ship for the service in view of the length of time that she had been laid up? A. Yes, it would require quite a few days.

Q. And you used all reasonable dispatch in getting the ship into condition again, is that right? A. Oh, we did; we wanted to get back on charter, of course.

* * * * * *

Trial Minutes.

Frank H. Bain, for Defendant—Direct.

Charles J. Conlon, for Plaintiffs—Cross.

(Testimony of Frank H. Bain)

(422) Frank H. Bain, called as a witness by defendant American-Hawaiian Steamship Company, being first duly sworn, testified as follows:

Direct examination by Mr. Tillinghast:

(427) Q. Were you familiar with the negotiation of labor disputes during the year 1948 between your company and the maritime unions? A. In general, yes.

Q. Were those negotiations fairly continuous? A. Yes, they were.

(428) Q. Up to the time the strike was declared? A. That's correct.

Q. Did you consider that there would be a strike? A. No, we were all quite optimistic that there would not be a strike, that negotiations would continue.

Q. Did you carry on your business on a day-to-day basis with that in mind? A. That's right. We continued on in a normal way.

Q. When the strike was finally declared, was there any way of knowing what its duration would be? A. No.

Q. Did your company continue to negotiate with the unions toward a settlement? A. I understand that they did, yes.

* * * * * *

(Testimony of Charles J. Conlon)

(121) Charles J. Conlon, called as a witness in behalf of the plaintiffs, being first duly sworn, testified as follows:

Cross examination by Mr. Bensel:

(149) Q. Did you know or learn at that time that negotiations were under way for settlement? A. Yes.

Trial Minutes.

Charles J. Conlon, for Plaintiffs—Cross.

Q. And if you can project yourself back to that period, is it your recollection that you and the ones you spoke to were hopeful that a settlement would be effected? A. We were optimistic.

Q. You were optimistic all through that period right down to the date when the Pacific Coast strike actually commenced, isn't that so? A. That's right.

Q. Did there come a time in August of 1948 when negotiations in respect of the East Coast resulted in a settlement? (150) A. Yes. We had even during that period, we had a continual flow of shipments——

Q. Even during what period? A. June, July, August and September of 1948, there were vessels that sailed.

Q. My question was this: Did there come a time in August 1948 when you ascertained that the differences between the employees and employers in the Maritime industry in respect of the East Coast had been settled? A. To my knowledge there was, yes.

Q. What? A. To my knowledge there was.

* * * * * * *

Cross examination by Mr. Scott:

(156) Q. You said something about information you had about an injunction under the Taft-Hartley Act in 1948. A. The information we had was generally known that there was going to be an injunction served to prevent the strike.

Q. That was general knowledge among the shipping agents and forwarders, wasn't it? A. That's right.

Q. And you went on with business as usual? A. That's right.

Q. You didn't make any changes in your business? A. No, we continued right along.

Q. And you didn't make any prophecies as to what would happen? A. We couldn't.

Q. You didn't know, did you? A. That's right.

Plaintiffs' Exhibit 4 (In Part).

Charles J. Conlon, for Plaintiffs—Re-cross.

John H. Dalton, for Plaintiffs—Direct.

Q. You didn't know whether it would be settled (157) or whether there would later be another strike? A. That's right.

Q. Did you know of anybody that did know? A. No, sir.

Q. In August of 1948? A. No, sir.

Q. You went on with business as usual? A. Yes, sir.

Q. And so did the other shipping people you knew? A. That's right.

• • • • • • •

Re-cross examination by Mr. Bensel:

(160) Q. But as you said to Mr. Scott a minute ago, in July and August business went on as usual? A. That's right.

Q. You didn't hold back any shipments because of any concern of a possible strike? A. No, sir.

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Plaintiffs' Exhibit 4 (In Part)

(Dalton Deposition)

(3) John Hansen Dalton called by and on behalf of the Plaintiffs, being first sworn by a Notray Public was examined and testified as follows:

Direct examination by Mr. Dunn:

(20) Q. Was your firm the agents, acting in connection with the steamship Hawaiian in New Orleans on or about August 31, 1948? A. If my memory serves me correctly, I believe that we were acting in the capacity of agents for a New York ship operator, not for the owners of the vessel.

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Plaintiffs' Exhibit 4 (In Part),

John H. Dalton, for Plaintiffs—Cross.

(28) Q. Then when it reached Westwego, who prepared the stowage plan?' A. That— —your mean who would tell the stevedore how to load the cargo?

Q. Yes. A. In this case— —and my records would never reflect who would actually tell him— —customarily, the agent would tell the stevedore, after receiving those advices from the ship operator. In this case, the operator could (29) have possibly told the stevedore direct or we, as the agent, could have told the stevedore, but this particular stevedore was dealing directly with this operator at the time, not necessarily in every case through our office.

* * * * * *

(54) Do you recall whether some of that cargo loaded in December was booked in the interim between September 3rd and December 9th? A. I could not answer you yes, but I could say I believe so.

* * * * * *

Cross examination by Mr. Bensel:

(68) Q. Now, you testified that Farrell Shipping Company arranged for the shipping space for this caustic soda, did you not? A. No, I did not testify that way. I think I was asked if I knew who was representing the Colorado Fuel & Iron Company. I said, to the best of my knowledge and belief, Farrell Shipping Company.

Q. In connection with the shipment of caustic soda? (69) A. In connection with the shipment of caustic soda.

Q. And they are known as brokers, in the transaction? A. They are known as brokers in the transaction.

Q. And they received a certain brokerage commission for their services in such a transaction? A. Ordinarily, yes. You are speaking now from the ship?

Q. From somebody? A. I don't know from the shipper. From the ship, ordinarily, they would get a brokerage.

Plaintiffs' Exhibit 4 (In Part).

John H. Dalton, for Plaintiffs—Re-cross.

Q. Did they receive a brokerage fee in connection with this transaction? A. I would have to refer to my records, but I am reasonably sure they did.

Q. There is no doubt about it, is there? A. Not in my mind. No.

Q. And that brokerage was paid by whom? A. Well, it would be paid by Isbrandtsen Company, whether direct or through me I don't know at this particular moment.

(70) Q. Now, you testified that there was a substitution made of the *Hawaiian*— —the SS. *Hawaiian* for the *Swisshelm*, (71) as far as this particular contract, or "Exhibit B" is concerned? A. That is what the record shows.

Q. Who made that substitution? A. Well, it could not be anyone but the ship operator: Isbrandtsen. That is, as far as I am concerned. The booking was made by us apparently for account of Isbrandtsen Company for the *Swisshelm* or substitute. If there was a substitute boat and apparently it was, it must have been substituted by Isbrandtsen.

Q. Who issued the bill of lading in connection with this shipment of caustic soda? A. I would have to check the records, but I believe in this case we did.

Re-cross examination by Mr. Scott:

(97) Q. Mr. Dalton, in 1948, your firm, Hansen & Tidemann, were acting as agents for Isbrantsen Company, Inc., of New York? A. I don't know whether that is true for the whole year of 1948.

Q. In and after August? A. I know that is true in this particular time of which we are speaking.

Q. In connection with this vessel, the SS. *Hawaiian*? A. Definitely.

Plaintiffs' Exhibit 4 (In Part).

John H. Dalton, for Plaintiffs—Re-cross.

Q. Through from August until December of that year? A. I would say yes.

* * * * * *

(99) Q. With respect to bills of lading No. 144 and 145, which have been marked Exhibits "Defendants'-F and H", in this case, which appear to be signed by Hansen & Tidemannn, "Per Pro: J. H. Dalton." That refers to you? A. That is correct.

Q. J. H. Dalton? A. That is correct.

Q. You signed those bills of lading? A. I signed the original; yes.

Q. You signed the original bills of lading on the dates specified in the bills? A. Definitely.

Q. At that time were the goods referred to in those bills of lading on board the SS. *Hawaiian?* A. Definitely.

Q. They were on board when the bills of lading were issued and signed? A. Definitely.

Q. Were those bills of lading prepared by Farrell Shipping Company which represented Colorado Fuel & Iron Corporation? A. I can only assume so, as that is customary.

Q. Were they issued and signed by you in the regular course of business? (100) A. Right; that is correct.

Q. And in the regular way? A. That is correct.

* * * * * *

(105) Q. Mr. Dalton, there is nothing unusual about overtime in connection with the loading of ocean going vessels, is there? A. I would say in these days of high expenses it is more usual than unusual; high expenses of ship operating, that is.

Q. And to the extent that it saves time of the ship, it is not a net loss; the extra expenses? A. Sometimes it is a net gain. It is a gain occasionally for the operator, depending on how much money he spends for overtime as

Plaintiffs' Exhibit 4 (In Part).

Robert T. Smith, for Plaintiffs—Direct.

against what the ship is costing him for what he is paying for the ship.

Q. Mr. Dalton, you are satisfied that your firm, Hansen & Tidemann, did everything possible within its power to load and despatch this ship at the earliest possible time?

Mr. Dunn: Objected to as to form.

A. Definitely.

* * * * * *

(107) A. I would say at the particular time the vessel was on strike it was my opinion if we wanted to discharge the cargo that would not have been possible.

Mr. Bensel:

Q. Why would it not be possible? A. The vessel on strike— —her gear would not work, naturally; she had no steam. If we attempted to employ cranes to discharge that ship I assume, as customary, the seamen would put up a picket line and the longshoremen would not cross it.

(Smith Deposition.)

(111) Robert T. Smith called by and on behalf of the Plaintiffs, being first sworn by a Notary Public, was examined and testified as follows:

Direct examination by Mr. Dunn:

(122) Q. Referring again to the loading of the vessel *Hawaiian* at New Orleans, did the New Orleans Stevedoring Company, Inc. supply the stevedores on that job? A. Yes, sir, they were the contractors designated by Isbrandtsen to load the vessel.

Plaintiffs' Exhibit 4 (In Part).

Robert T. Smith, for Plaintiffs—Cross.

Q. What was Isbrandtsen's connection with the vessel? A. Isbrandtsen were the chartering owners of the vessel.

Q. You mean by that charterers or owners? A. Charterers.

• • • • • •

(123) Q. You stated, I believe, that you were engaged by the Isbrandtsen Company? A. That's correct.

• • • • • •

(126) Q. Was any overtime work in the loading of the SS. *Hawaiian* on that occasion? A. To the best of my knowledge, yes.

• • • • • •

(127) Q. On the overtime, what you recall working, was that on request or instructions of others? A. Well, ordinarily, in my dealings with Isbrandtsen, I had certain amount of authority to guide the working of the vessel in so far as overtime is concerned to conform with the scheduled advertised sailing date. If we encountered delays that would make us miss our sailing date, or if the vessel was late in arrival, we worked the necessary overtime consistent with the availability of the cargo so that the vessel would be able to sail on that scheduled advertised date.

• • • • • •

Cross examination by Mr. Tillinghast:

(146) Q. Yes. A. I don't recall any suggestion of that kind, but I would say this: That had it been made, I would have said that wouldn't be possible because the ship's crew would have thrown a picket line around the vessel and (147) the labor would not have gone aboard.

Q. On this point, please excuse my ignorance. How could they extend a picket line beyond the vessel in an open

Plaintiffs' Exhibit 4 (In Part).

Robert T. Smith, for Plaintiffs—Cross.

ship if you were to use a crane on a barge? A. If the ship, you mean, was at anchor?

Q. Yes. A. Well, sir, you have a boat landing by which the labor would be taken aboard the ship and they would picket that boat landing.

Q. Do you know, of your own knowledge, of course, whether there was a request made by anyone to remove this cargo in order that it might be carried on another ship? A. I can't positively state that.

Q. Would you say that the cargo could not have been removed from the holds of the *Hawaiian* once the strike started? A. Under the circumstances, it would have been impossible.

Q. Physically impossible to remove it? A. Impossible.

* * * * * *

(155) Q. Strikes or work stoppages are usually temporary in nature? A. Temporary, yes, sir.

Q. From your experience, would you say that a layup of three months was an extraordinary thing? A. Yes, sir.

* * * * * *

Cross examination by Mr. Scott:

(157) Q. When you wrote this Exhibit 3 on September 2, 1948 (Hands document to witness), you didn't know whether there would be a strike or not, did you? A. That's very difficult to answer except in this way: that, had I known on September 2, that on September 3, the vessel would be shut down account of strike, that it would have been impossible to get all of our cargo on board that night, or by daylight the next morning——

Q. Go ahead? A. That's all.

Q. Don't think you completed your sentence. (Answer read by the reporter). A. Well, to be more specific, I don't recall at that time the letter was written of having any knowledge that the vessel would go on strike the following day. Does that answer?

Plaintiffs' Exhibit 4 (In Part).

Robert T. Smith, for Plaintiffs—Cross.

Q. And that letter was written on Thursday, September 2, wasn't it? A: I believe Thursday was September 2, according to the records here.

Q. Friday was September 3, Saturday was September 4. A. (Examines documents.) September 2 was a Thursday.

Q. September 3 was a Friday and September 4 was Saturday? (158) A. That's correct.

Q. And then, in your letter, you refer to Saturday? A. That's right.

Q. You refer to the possibility of the vessel sailing on Saturday? A. That's correct.

Q. So that letter is written, is it not, on the supposition that the then existing situation would continue and there would be no strike? A. That's correct.

Q. You wrote that letter in good faith, didn't you? A. Certainly.

Q. And the matters and views you expressed in that letter were honestly expressed by you at the time you wrote it? A. Yes, sir.

* * * * * *

(166) Q. It would not have been possible to have put cargo aboard that vessel while the strike was in effect? A. No.

Q. You mean by your answer that it would have been impossible; is that right? A. Correct; it would have been impossible from a stevedoring standpoint.

Q. You know of nothing that the owners, operators or agents could have done to have completed the loading and despatch of that vessel until the strike was over? A. To the best of my knowledge and the conditions that existed at that time, there was nothing they could do about it.

(167) Q. The only thing you can do in a strike like that is to wait out the strike? A. That seems to be all we can do; it's all we have ever been able to do.

Plaintiffs' Exhibit 4 (In Part).

Robert T. Smith, for Plaintiffs—Re-direct.

Q. And that answer is given on the basis of your long experience in the stevedoring business and at the Port of New Orleans? A. That is correct.

* * * * * *

Re-direct examination by Mr. Dunn:

(168) Q. Would you say that the operators did all they could to load the vessel while they had the opportunity to do so? A. Yes, I would say so, Mr. Dunn. Every good operator strives very hard to get his ship at sea if there is a pending work stoppage. I might facetiously say that that applies to Christmas too and in all my experience, which has been many years, I have naturally come upon many work stoppages, contemplated work stoppages. For instance——

Mr. Tillinghast: Don't stop.

Mr. Bensel: Let him finish his answer.

A. For instance, if we anticipate trouble through the expiration of our contract, we have often been called (169) upon to try to complete the loading before that trouble happens, if we are sure that it's going to happen.

Mr. Dunn:

Q. And in this particular case you did all that you could to get the ship loaded at that time, is that so? A. I would say that from the record, that's apparently so by reason of working all that night prior to the work stoppage.

* * * * * *

Re-direct examination by Mr. Tillinghast:

(169) Q. In the same way, is it customary to suspend ship operations when you consider that a strike might be about to occur? A. No, sir, we keep——

Mr. Dunn: Object to that question.

Plaintiffs' Exhibit 4 (In Part).

James R. Gormley, for Plaintiffs—Cross—Re-cross.

(170) A. We keep working up till the time we are actually stopped.

Mr. Tillinghast:

Q. Why do you continue to work? A. We continue to work because there is often disturbances of various kinds that are in the offing, but never materialize. We just couldn't stop industry because of a threatened or a rumored strike.

Mr. Tillinghast:

Q. And by the same token, if it does occur, it's usually temporary; isn't that true? A. In most instances it has been.

• • • • • • •

(GORMLEY DEPOSITION)

(242) JAMES RUFUS GORMLEY called by and on behalf of the Plaintiffs, being first sworn by a Notary Public, was examined and testified as follows:

Cross examination by Mr. Tillinghast:

(247) Q. Is it a correct statement to say that negotiations had continued up to the time this telegram was dispatched? A. Oh, certainly.

• • • • • • •

Re-cross examination by Mr. Scott:

(255) Q. At the time that telegram was sent, the shipowner's proposals had not been rejected? A. The proposals, a number of the proposals that they had made, had been rejected.

Plaintiffs' Exhibit 4 (In Part).

James R. Gormley, for Plaintiffs—Re-cross.

Q. I am referring to the part of the telegram that says, "UNDER THESE CIRCUMSTANCES WE HAVE NO OTHER RECOURSE THAN TO RECOMMEND THAT THE SHIPOWNER'S PROPOSALS BE REJECTED." A. That is a recommendation that it be rejected, to go on strike. But there are a number of proposals that they had that already had been rejected and they were meeting from time to time to try to straighten them out, and change their viewpoint to keep from going on strike.

Q. And those meetings had continued up to that time? A. Off and on.

Q. That telegram is dated the 2nd of September, 1948, is it? A. That is right.

(256) Q. Can you tell us from it when, or approximately when, it was received at New Orleans? A. The next morning.

Q. That would be on the morning of September 3rd? A. Roughly then, because Labor Day came in there.

. . . . . .

(258) Q. Now, on the second page of that telegram it refers to some period of duration anticipated for the strike. Was it anticipated that the strike might be settled or could be settled, possibly, over the Labor Day Week End? A. There is always a possibility it could.

Q. Well, is that what that word "anticipated" refers to? A. If it was anticipated to be a long one, then we were to fly the strike committee members from each port to San Francisco to be on the National Strike Committee.

(259) Q. This says that that would occur if it appears that strike will be of much longer duration than anticipated. A. That is right; so that the operators might change their viewpoint and get down to business, when all the ships were tied up and the picket lines were set up.

Q. Over the week end Labor Day? A. That is right. It gives them time to think it over.

. . . . . .

Plaintiffs' Exhibit 3 (In Part)

(MASSE DEPOSITION)

(2) JOSEPH H. MASSE, being duly sworn by Harriet C. Thirkield, Notary Public, as a witness on behalf of the American-Hawaiian Steamship Company, testified as follows:

Direct examination by Mr. Tillinghast:

(3) Q. This is a photostatic copy of a time charter between American-Hawaiian Steamship Company and Isbrandtsen Company, [4] Inc., dated August 17, 1948, is that correct? A. Yes.

* * * * * *

Q. Was a copy of the charter delivered to you in August 1948? A. Yes.

Q. Was delivery of the vessel ever made under the charter party which we have been discussing? A. Yes, the vessel was delivered as the vessel passed Quarantine on the voyage to Houston.

Q. Was that the voyage out from New York? A. Out from New York, yes.

* * * * * *

(6) Q. On what date did you arrive at New Orleans? A. Arrived at New Orleans on the 30th of August 1948.

Q. Did you report to anyone at New Orleans when you arrived there? A. I reported to Isbrandtsen's agents again—Hansen & Tidemann.

(7) Q. Did you receive orders from them? A. Yes, received orders to put the ship in to the Standard Oil pier for bunkering, which was done in the morning, and then we went to the loading berth that afternoon.

Q. To what loading berth were you directed? A. I was directed—I can't think of the name of that place—above New Orleans on the other side of the river—Westwego.

* * * * * *

Plaintiffs' Exhibit 3 (In Part).

Joseph H. Masse, for Defendant—Direct.

(8) Q. Who hired the gang—by gang, you mean stevedores? A. Stevedore gangs, yes.

Q. Do you know who hired those stevedores? A. Hansen & Tidemann, Isbrandtsen's agents.

Q. Do you know who paid the stevedores? A. Isbrandtsen.

Q. Was the vessel's gear used to load the cargo? A. Oh, yes.

Q. Who operated the winches? A. The stevedores operated the winches.

Q. Who prepared the vessel's holds for the receipt of cargo, by laying dunnage and so on, if that was done? A. The stevedores.

Q. Do you know who furnished the dunnage? A. I don't know, that would be for Isbrandtsen's account.

Q. With respect to the loading, what did you personally do, if anything? A. I didn't do much, just watched the cargo that went into the ship so I would be familiar with it, that is about all, just to see what the ship was stable.

Q. Did any other officers or crew of the vessel have any functions to perform with respect to the loading, either at Houston or at New Orleans? A. No, just the usual duties.

Q. Which are— A. Duties—well, the usual duties looking for damages—damaged cargo—and make sure, for (9) instance, if we were carrying like wet burlap which would be apt to cause spontaneous combustion, make sure that type of cargo was loaded wet.

Q. Did the engineroom crew have any function to perform? A. Just to keep steam up for the winches to run.

Q. And you said the stevedores ran the winches? A. Yes.

Q. Isn't it a fact that Isbrandtsen's house marks were painted on the stack? A. Yes.

* * * * * *

Plaintiffs' Exhibit 3 (In Part).

Joseph H. Masse, for Defendant—Direct.

(40) Q. On Wednesday, September 1st, loading was continued until 6 P.M., was it not? A. Yes.

Q. What was the reason for working an hour overtime on the loading on that date? A. I don't know that. That would be the stevedore's orders or responsibility, that wouldn't have anything to do with the ship.

Q. Didn't you have general command of the ship and were expected to have it in readiness for loading at the usual hours? A. The ship was ready for loading when she got in to New Orleans, and she was ready for loading at all times while she was in New Orleans.

Q. Did you have anything whatever to do with issuing orders to any of the people on that ship with respect to the loading operations or co-operation therein by the (41) ship's company? A. No, I wouldn't have any responsibility in ordering the stevedores to work or not to work, that is the stevedoring company's responsibility.

Q. How about the engineroom gang and firemen? A. The engineroom gang and firemen, that is true.

Q. Did the stevedore give you notice that he proposed to continue loading for an additional hour? A. No. That may be the custom of the port, at New Orleans, that they work until 6 o'clock, because New York, after 5 o'clock, it is overtime—I don't know what the custom of the port is at New Orleans.

Q. On August 31st you had stopped loading cargo at 5 P.M., is that right? A. Yes, according to the logbook here.

Q. Was there any reason you know of to cease loading prior to the normal hour for quitting at New Orleans? A. No, I had nothing to do with the stevedore's time of starting or quitting, other than to keep a log of it.

* * * * * *

(45) Q. Who did speak to you about the proposed loading of the ship around the clock? A. No one that I can remember.

Plaintiffs' Exhibit 3 (In Part).

Joseph H. Masse, for Defendant—Re-direct.

Q. Was that a complete surprise to you that they continued working around the clock on that date? A. No, it wasn't a complete surprise to me.

Q. Did you have any reason to expect that they would continue loading around the clock? A. No.

Q. Did you have any explanation of why loading continued around the clock? A. That is entirely up to Isbrandtsen, if Isbrandtsen wants to pay the overtime rate to the stevedores to put the cargo in the ship, that is entirely up to Isbrandtsen.

* * * * * *

(57) Q. Who was the agent of the American-Hawaiian Steamship Company at New Orleans? A. Strachan Shipping Company is our usual agent at the port of New Orleans.

Q. Did any representative of Strachan Shipping Company speak to you at any time during your stay at New Orleans, from arrival until September 3rd when the strike was on? A. No, not prior to September 3rd.

* * * * * *

Q. When you arrived at New Orleans originally then, did or did you not report to Strachan Shipping Company your arrival? A. No, we didn't.

* * * * * *

Re-direct examination by Mr. Tillinghast:

(59) Q. Was due despatch, in your opinion, used in loading cargo in New Orleans during the times it was possible to load? A. Yes.

Q. Was the vessel in all respects tight, staunch, strong and seaworthy when she sailed from New York? A. She was.

Q. And at all times during this voyage? A. She was.

Q. And did she prosecute her voyage to India with all despatch? A. She did.

Plaintiffs' Exhibit 2 (In Part).

R. S. Dass Badhwar, for Plaintiffs—Cross.

(60) Q. And without delay? A. That is right.

Q. This vessel was on time charter, is that a fact? A. Yes.

Q. And the owner received payment for all the time that she was on hire, isn't that a fact? A. Yes.

Q. Who determined the hours worked under the time charter, in loading and discharging? A. The charterer.

Q. Was it your responsibility to keep the vessel at all times in readiness? A. That is right.

Q. Was the vessel at all times kept in readiness to load? A. Yes.

Q. Around the clock if necessary? A. Yes.

Q. You loaded cargo as it was tendered? A. Yes.

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Plaintiffs' Exhibit 2 (In Part)

(Badhwar Deposition)

(3) R. S. Dass Badhwar, called and sworn as a witness on behalf of plaintiffs, testified as follows:

Cross examination by Mr. Tillinghast:

(40) Q. It is a fact, also, that steamship companies have to deliver directly into the Port Trust, they can't deliver direct to you? A. No.

Q. You mean yes? A. That is right, they can't deliver directly to me.

Q. When were the goods delivered to your go-down? A. When was it delivered to our go-down? I can't give you exact dates. I could tell you that by March, about the middle of March, we had completed all the removal.

Q. You had received delivery? A. Yes, we had completed the removal, you see.

Q. Into your possession? A. Yes.

• • • • • •

Plaintiffs' Exhibit 3

Masse Exhibit 1 (In Part).

Time Charter.

* * * * * *

This Charter Party made and concluded in the City of New York the 17th day of August 1948 between American Hawaiian Steamship Company * * * and Isbrandtsen Company, Inc.

"Witnesseth, That the said Owners agree to let, and the said Charterers agree to hire the said vessel, from the time of delivery, for about five (5) months to about eight (8) months at Charterers option within below mentioned trading limits. Charterers to have liberty to sublet the vessel for all or any part of the time covered by this Charter, but Charterers remaining responsible for the fulfillment of this Charter Party. Vessel to be placed at the disposal of the Charterers, twenty four hours after passing Quarantine, New York Vessel on her delivery to be ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted for the service, having water ballast, winches and donkey boiler with sufficient steam power, or if not equipped with donkey boiler, then other power sufficient to run all the winches at one and the same time (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage), to be employed, in carrying lawful merchandise, including petroleum or its products, in proper containers, excluding explosives, mahogany logs, pitch in bulk, sulphur in bulk and asphalt in bulk (vessel is not to be employed in the carriage of Live Stock, but Charterers are to have the privilege of shipping a small number on deck at their risk, all necessary fittings and other requirements to be for account of Charterers), in such lawful trades, between safe port and/or ports always within American Institute Warranties Limits, as the Charterers or their Agents shall direct, on the following conditions:"

Plaintiffs' Exhibit 3.

"2. That the Charterers shall provide and pay for all the fuel except as otherwise agreed, Port Charges, Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the Crew), and all other usual expenses except those before stated, but when the vessel puts into a port for causes for which vessel is responsible, then all such charges incurred shall be paid by the Owners. Fumigations ordered because of illness of the crew to be for Owners account. Fumigations ordered because of cargoes carried or ports visited while vessel is employed under this charter to be for Charterers account. All other fumigations to be for Charterers account after vessel has been on charter for a continuous period of six months or more."

. . . . . .

"6. That the cargo or cargoes be laden and/or discharged in any dock or at any wharf or place that Charterers or their Agents may direct, provided the vessel can safely lie always afloat at any time of tide, except at such places where it is customary for similar size vessels to safely lie aground."

"7. That the whole reach of the Vessel's Hold, Decks, and usual places of loading (not more than she can reasonably stow and carry), also accommodations for Supercargo, if carried, shall be at the Charterers' disposal, reserving only proper and sufficient space for Ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel. Charterers have the privilege of passengers as far as accommodations allow, Charterers paying Owners $3.00 per day per passenger for accommodations and meals. However, it is agreed that in case any fines or extra expenses are incurred in the consequence of the carriage of passengers, Charterers are to bear such risk and expense."

Plaintiffs' Exhibit 3.

"8. That the Captain shall prosecute his voyages with the utmost despatch, and shall render all customary assistance with ship's crew and boats. The Captain (although appointed by the Owners), shall be under the orders and directions of the Charterers as regards employment and agency; and Charterers are to load, stow, and trim the cargo at their expense under the supervision of the Captain, who is to sign Bills of Lading for cargo as presented, in conformity with Mate's or Tally Clerk's receipts."

* * * * * *

"11. That the Charterers shall furnish the Captain from time to time with all requisite instructions and sailing directions, in writing, and the Captain shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers or their Agents, and furnish the Charters, their Agents or Supercargo, when required, with a true copy of daily Logs, showing the course of the vessel and distance run and the consumption of fuel."

* * * * * *

"23. Vessel to work night and day, if required by Charterers, and all winches to be at Charterers' disposal during loading and discharging; steamer to provide one winchman per hatch to work winches day and night, as required, Charterers agreeing to pay officers, engineers, winchmen, deck hands and donkeymen for overtime work done in accordance with the working hours and rates stated in the ship's articles. See Clause 30. If the rules of the port, or labor unions, prevent crew from driving winches, shore Winchmen to be paid by Charterers. In the event of a disabled winch or winches, or insufficient power to operate winches, Owners to pay for shore engine, or engines, in lieu thereof, if required, and pay any loss of time occasioned thereby."

* * * * * *

Plaintiffs' Exhibit 1.

"30. Charterers to pay overtime to officers, engineers, winchmen, deckhands and donkeymen for all overtime done for Charterer's account. The amount of overtime for which Charterers shall be liable will be that which is in excess of overtime Owners would have paid in accordance with union agreements had vessel not been working cargo or otherwise under Charterers instructions."

• • • • • •

"35. Charterers agree to indemnify all consequences or liabilities that may arise from bills of lading inconsistent with this charter being signed by the Captain or for him or from his otherwise complying with same."

• • • • • •

Plaintiffs' Exhibit 1.

Schedule AO and AS (In Part).

Bills of Lading (Terms Identical in both)

ISBRANDTSEN LINES

• • • • • •

Shipper: The Colorado Fuel & Iron Corporation
Consignee: Order of The National City Bank of New York, New York City N. Y.

• • • • • •

"IN ACCEPTING THIS BILL OF LADING the shipper, consignee and owner of the goods agree to be bound by all of its stipulations, exceptions, and conditions, whether written, printed, or stamped on the front or back hereof, any local customs or privileges to the contrary notwithstanding.

IN WITNESS WHEREOF, the Master of the said ship has affirmed to THREE bills of lading, all of this tenor

Plaintiffs' Exhibit 1.

and date, one of which being accomplished, others to stand void.

Dated at New Orleans, La. Sep.—3 1948.

For The Master

ISBRANDTSEN COMPANY, INC.
as Agents for the Master

HANSEN & TIDEMANN, INC
By J. H. Dalton /s/

"1. This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States of America, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. The provisions stated in said Act (except as may be otherwise specifically provided herein) shall govern before the goods are loaded on and after they are discharged from the ship and throughout the entire time the goods are in the custody of the Carrier. The Carrier shall not be liable in any capacity whatsoever for any delay, non-delivery or misdelivery, or loss of or damage to the goods occurring while the goods are not in the actual custody of the Carrier. If this bill of lading is issued in a locality where there is in force a Carriage of Goods by Sea Act or Ordinance or Statute of a similar nature to the International Convention for the Unification of Certain Rules relating to Bills of Lading at Brussels of August 25, 1924, it is subject to the provisions stated in such Act, Ordinance and rules thereto annexed which may be in effect where this bill of lading is issued."

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Plaintiffs' Exhibit 1 (In Part).

"18. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the Carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the Carrier, of the goods as described in the bill of lading. If the loss or damage is not apparent the notice must be given within three days of the delivery. The Carrier shall not be liable upon any claim for loss or damage unless written particulars of such claim shall be received by the Carrier within thirty days after receipt of the notice herein provided for."

"19. In any event the Carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after the delivery of the goods or the date when the goods should have been delivered. Suit shall not be deemed brought until jurisdiction shall have been obtained over the Carrier and/or the ship by service of process or by an agreement to appear."

* * * * * *

Plaintiffs' Exhibit 1 (In Part)

Schedule J.

* * *

L C W. A. BARTLETT
CARE COLORADO FUEL AND IRON CORP
1616 EYE ST WASHINGTON D C
REFERENCE OUR NEGOTIATIONS 2000 TONS CAUSTIC SODA SOLID THROUGH NATIONAL CITY BANK NEW YORK BOMBAY AND YOUR ACCEPTANCE OUR OFFER AT 9.5 CENTS PER LB. C I F INDIAN PORT OUR IMPORT LICENSE NUMBER 000417/48 VALID UP TO SEPTEMBER 22 STOP.

* * * * * *

Plaintiffs' Exhibit 1 (In Part)

Schedule AY.

September 13, 1948

The National City Bank of New York
New York 15, New York

Ref: CCF: 87723:JJR

Gentlemen:

This will acknowledge receipt of your checks for $104,631.86 and $212,743.67 in payment of our drafts No. 1838 and 1839 drawn over your credits 86897 and 87723.

We hereby certify that the shipments of caustic soda covered by the above draft were made in new steel drums.

Our New York office is making arrangements with the insurance underwriters to issue an indorsement on the insurance certificates changing the date from September 7 to September 3.

(sgd.) E. C. THOMPSON
Export Department

E. C. Thompson/jy
cc: H. C. Crout
M. R. Rosse
Files

Plaintiffs' Exhibit 1 (In Part).

Schedule Z.

THE NATIONAL CITY BANK OF NEW YORK
55 Wall Street
New York 15, N. Y.

New York, August 19, 1948

Confirmed Irrevocable Straight Credit
W. A. BARTLE, Care Colorado Fuel & Iron Corporation
1616 Eye Street
Washington, D. C.

Dear Sirs:

. . . . . .

Full set on board ocean bills of lading showing freight prepaid and made out to the order of the National City Bank of New York and/or to order and blank endorsed, dated latest October 10, 1948, all negotiable copies required. Through railway bills of lading are unacceptable.

. . . . . .

Yours very truly,

THE NATIONAL CITY BANK OF NEW YORK
(Signed)

Plaintiffs' Exhibit 1 (In Part).

Schedule AH.

THE NATIONAL CITY BANK OF NEW YORK
55 Wall Street
New York 15, N. Y.

New York, August 26, 1948

Confirmed Irrevocable Straight Credit
Colorado Fuel & Iron Corporation
500 Fifth Avenue
New York, New York

Dear Sirs:

* * * * * *

Full set on board ocean bills of lading showing freight prepaid and made out to the order of the National City Bank of New York and/or to order and blank endorsed, dated latest September 22, 1948, all negotiable copies required. Through railway bills of lading are unacceptable.

* * * * * *

Yours very truly,

THE NATIONAL CITY BANK OF NEW YORK
(Signed)